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# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1947**

Petitioner
not granted

## No. 721

SAMUEL TAYLOR,
*Petitioner,*

*vs.*

STATE OF ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

## BRIEF FOR PETITIONER

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STATE OF ALABAMA,

*Respondent.*

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## BRIEF FOR PETITIONER

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The majority and dissenting opinions of the Supreme Court of Alabama appear in the record filed in this cause (R. 16-28) and are reported at ——Ala.——, 32 So. (2d) 659.

### Jurisdiction

Jurisdiction of this Court is invoked under Sec. 237(b) of the Judicial Code (28 U. S. C. 344(b)), as amended February 13, 1925.

The date of judgment was the 4th day of December 1947, on which date the Supreme Court of Alabama overruled petitioner's application for rehearing in this cause (R. 30), after said court had, on the 13th day of November 1947, denied petitioner's application for leave to file a petition for writ of error *coram nobis* in the Circuit Court of Mobile

County, Alabama (R. 28). Petition for certiorari was filed on March 3, 1948 and was granted by this Court on April 5, 1948 (R. 31).

## Summary Statement of Matter Involved

### 1. *Statement of Case*

Petitioner, Samuel Taylor, an ignorant Negro youth, was charged with having committed the crime of rape of a white girl; was tried, convicted and sentenced by the Circuit Court of Mobile County, Alabama, on the 19th day of November 1946. Judgment and sentence of death was imposed upon petitioner on the 19th day of November 1946. Petitioner is now confined in an Alabama state penitentiary under sentence of death, pursuant to the said judgment.

On the 24th day of April, 1947, the Supreme Court of Alabama affirmed the judgment of the Circuit Court of Mobile County, Alabama.

On September 18, 1947, petitioner applied to the Supreme Court of Alabama for leave to file an application for writ of error *coram nobis* before the Circuit Court of Mobile County, Alabama (R. 1). The petition and supporting affidavits alleged that the confession upon which petitioner's conviction was based was extorted by force and violence exerted against him by state officers; that he was ignorant of his rights at the time of trial and because of fear of reprisals did not advise his court-appointed attorney that the said confession was so extorted; that petitioner's new attorney was not advised of these facts until after petitioner's conviction, the preparation and filing of the motion for new trial, the overruling of said motion by the Circuit Court of Mobile County, Alabama, the appealing of petitioner's case and the docketing of same and the decision of said Supreme Court of Alabama as aforesaid (R. 1-11).

The State of Alabama moved to dismiss the said petition and the issue was thus submitted for determination of the court (R. 11-15). The Supreme Court of Alabama denied the application, holding that:

1) The proposed attack on the judgment lacked merit; and

2) The allegations of the petition were unreasonable and there was no probability of truth therein (R. 16-20).

3) Petitioner did not testify in the original trial and the petition did not contain a "positive statement of denial of guilt or present protestation of innocence."

The dissenting opinion pointed out that the writ of error *coram nobis* was proper to reach facts which were unknown to the court when judgment was pronounced and which the petitioner was prevented from presenting because of duress, fear or other sufficient cause and that in this case "the petition considered in the light of the record shows a reasonable probability of the truth of the allegations in the petition and entitles petitioner to leave to seek relief in the trial court" (R. 20-28).

In this Court, petitioner asserts that his constitutional right to due process of law was violated by the action of the Supreme Court of the State of Alabama in denying him permission to file an application for writ of error *coram nobis* in the Circuit Court of Mobile County, Alabama.

### 2. *Statement of Facts*

The details surrounding the obtaining of the alleged confession from petitioner, upon which his conviction below was based, appear in the petition for writ of error *coram nobis* and the supporting affidavits (R. 1-11). Counsel for petitioner representing him on the filing of his petition for leave to file an application for writ of error *coram nobis* did

not represent him at his trial in the Circuit Court of Mobile County, Alabama. Petitioner, as alleged in his petition to the Supreme Court of Alabama, because of fear of bodily harm, failed to inform the attorney representing him at his trial of the circumstances surrounding the obtaining of the said alleged confession (R. 4). The said attorney could not have known of these facts by the exercise of reasonable diligence in time to have presented them to the trial court (R. 4). After final affirmance of his conviction by the Supreme Court of Alabama, petitioner's present counsel was requested to intervene. Petitioner's present attorney obtained affidavits supporting petitioner's allegations of cruel and inhuman treatment from three other individuals who were arrested and confined at the same time as petitioner. These affidavits were submitted in support of his petition to the Supreme Court of the State of Alabama (R. 6, 8, 10). The petition and affidavits showed that petitioner and three (3) other Negro youths were arrested by police in Prichard, Alabama, near midnight on the night of June 29, 1946 (R. 2). They were taken to the City Jail at Prichard, Alabama, and subjected to cruel, brutal and inhuman treatment by several police officers in an attempt to obtain from them a confession to having committed a robbery. The other three Negro youths were detained in the City Jail without further molestation for several days. Petitioner, however, was subjected to continuous beating and mistreatment by police officers of the city of Prichard for a period of four consecutive nights. The purpose of the said beatings and questioning was to force petitioner to confess to an alleged rape which the said police officers accused him of having committed (R. 2-3).

After this mistreatment continued for a period of four nights, petitioner, in great fear for his life, health and safety, confessed to having committed the crime of rape. He was told at this time by these officers that if he made

mention of the fact that he had been beaten and mistreated, he would be subjected to even more beatings and mistreatment. After having made such confession, a group of outside responsible people of the community, who were without knowledge of the gross brutality and mistreatment to which petitioner had been subjected, was brought into the jail at Prichard, Alabama, at 3 o'clock on the morning of July 3, 1946, where petitioner was coerced through fear of further reprisals to again confess in the presence of these people in a staged, prearranged atmosphere (R. 3).

As stated in his petition, "Petitioner was put in such great fear for his future safety after having been subjected to such mistreatment * * *, and after having been threatened with even worse physical mistreatment by the police officers * * * if * * * (he) * * * did mention said beatings to any person, that he failed and refused by reason of such fear to mention this mistreatment and extortion of said confession from him to his attorney who was appointed by the Court to defend him * * *" (R. 4).

In spite of the strong *prima facie* case set forth by the petitioner in his petition and supporting papers presented to the Supreme Court of Alabama, permission to apply for a writ of error *coram nobis* in the Circuit Court of Mobile County, Alabama, was denied by a divided court (R. 28).

## Question Presented

Whether, in view of the facts alleged in the petition and supporting affidavits submitted to the Supreme Court of Alabama, the denial of opportunity to the petitioner to apply for a writ of error *coram nobis* to the court convicting him constituted a violation of petitioner's constitutional rights as guaranteed by the Fourteenth Amendment.

## Errors Relied Upon

The Supreme Court of Alabama erred:

In denying petitioner's application for leave to apply for a writ of error *coram nobis* to the Circuit Court of Mobile County, Alabama, and:—

a) In holding that the facts contained in the said application and supporting affidavits were not reasonable; and,

b) In holding that said allegations lacked the probability of truth; and,

c) In giving weight to the failure of petitioner to testify at his trial and to affirmatively allege his innocence in his petition.

## Outline of Argument

### I.

The Supreme Court of Alabama erred in Denying Petitioner's Motion for Leave to File a Petition for a Writ of Error *Coram Nobis*.

A. The conviction of petitioner through the use of a confession extorted by force, violence and fear is a violation of the Fourteenth Amendment.

B. The refusal to permit petitioner to file a petition for a writ of error *coram nobis* to raise this question and to introduce testimony in support thereof at a hearing free from fear was a denial of due process.

## Summary of Argument

Petitioner herein asserts that his constitutional right to the due process of law has been denied by the action of the Supreme Court of Alabama in dismissing his petition for permission to file a writ of error *coram nobis* with the court convicting him.

Petitioner's conviction was based upon an alleged confession obtained by officers of the State of Alabama through the unlawful use of force, duress and intimidation, as stated by this Court in a long line of cases outstanding among which is *Chambers* v. *Florida*, 309 U. S. 227.

The State of Alabama has recognized the writ of error *coram nobis* as a form of relief available to individuals unlawfully confined. The denial of the substance of relief to petitioner without opportunity given him to submit proof in support of the allegations contained in his petition for permission to file a writ of error *coram nobis* has deprived him of his due process of law.

## Argument

### *The Supreme Court of Alabama Erred in Denying Petitioner's Motion for Leave to File a Petition for a Writ of Error Coram Nobis.*

#### *A. The Conviction of Petitioner through the Use of a Confession Extorted by Force, Violence and Fear is A Violation of the Fourteenth Amendment.*

The principle referred to by this Court in the case of *Hysler* v. *Florida*,[1] that conviction upon a confession "wrung from an accused by overpowering his will, whether through physical violence or the more subtle forms of coercion commonly known as 'the third degree'" is offensive to our constitutional guarantee of due process and violates "civilized standards for the trial of guilt or innocence" is fundamental in our law. The principle has been reiterated by this Court in a long and unbroken line of decisions.[2] The

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[1] 315 U. S. 411, 413.

[2] *Brown* v. *Mississippi*, 297 U. S. 278; *Chambers* v. *Florida*, 309 U. S. 227; *Canty* v. *Alabama*, 309 U. S. 629; *White* v. *Texas*, 309 U. S. 631, 310 U. S. 530; *Lomax* v. *Texas*, 313 U. S. 544; *Vernon* v. *Alabama*, 313 U. S. 547; *Lisenba* v. *California*, 314 U. S. 219; *Ward* v. *Texas*, 316 U. S.

principle is controlling even though the alleged confession is not the sole basis for the conviction.[3]

*B. The Refusal to Permit Petitioner To File a Petition for A Writ of Error Coram Nobis to Raise this Question and to Introduce Testimony in Support Thereof, At a Hearing, Free from Fear Was a Denial of Due Process.*

Assuming the truth of the allegations contained in the petition before the Supreme Court of Alabama herein (R. 1), which assumption was effected by the state's motion to dismiss,[4] there can be no dispute that the principle discussed above is applicable to petitioner's conviction. The validity of this principle was recognized by the Alabama Supreme Court (R. 17) yet permission to file application for writ of error *coram nobis* was denied petitioner.

Though the common-law writ of error *coram nobis* was adopted by the State of Alabama,[5] pursuant to the mandate of this Court contained in the case of *Mooney* v. *Holohan*,[6] its relief has usually been denied to petitioners seeking hearings after conviction on alleged constitutional violations occurring during trial.[7]

The State of Alabama has established the rule that *habeas*

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547; *Ashcraft* v. *Tennessee*, 322 U. S. 143; *Lyons* v. *Oklahoma*, 322 U. S. 596; *Malinski* v. *New York*, 324 U. S. 401; *Lee* v. *Mississippi*, 92 L. Ed. —; *Haley* v. *Ohio*, —; 92 L. Ed. —.

[3] *Malinski* v. *New York*, *supra*, *Lee* v. *Mississippi*, *supra*.

[4] "The effect of the motion to dismiss is to confess the truth of the allegations of the petition for the purpose of said motion." Dissenting opinion, *Taylor* v. *State*, 32 So. (2d) 659 (R. 23).

[5] *Johnson* v. *Williams* (1943), 13 So. (2d) 683.

[6] 294 U. S. 103.

[7] *Johnson* v. *Williams*, *supra*; *Redus* v. *Williams* (1943), 13 So. (2d) 561; *Ex Parte Burns* (1945), 22 So. (2d) 517; *Ex Parte Lee* (1946), 27 So. (2d) 147.

*corpus* will lie only where the invalidity of the judgment appears on the face of the record of the trial.[8]

In Alabama the only procedure available to challenge a judgment on the grounds of facts not appearing on the face of the record is by means of a petition to the Supreme Court of Alabama for leave to petition the Circuit Court where the conviction was obtained for a writ of error *coram nobis* to review the judgment.[9]

If the requirements for the granting of this form of relief are so strict as to require refusal of relief in a case where the constitutional violation is as clearly alleged as herein, then the remedy offers "no substantial hope of relief." [10]

As stated by this Court in discussing the "procedural labyrinth" obtaining in the State of Illinois:

> ". . . the remedies available there are inadequate. Whether this is true because in fact no remedy exists, *or because every remedy is so limited as to be inadequate*, . . . . is beside the point. If the federal guarantee of due process in a criminal trial is to have real significance, . . . it is imperative that men convicted in violation of their constitutional rights have an adequate opportunity to be heard in court." [11] (Italics ours.)

No such "adequate opportunity" for a hearing in court has been given petitioner in this case.

The statement contained in the dissenting opinion below accurately reflects petitioner's position before this Court:

> "If the petitioner in his application must affirm his innocence and make proof rebutting the implications of guilt arising from the judgment of conviction procured by use of coerced confessions before he can

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[8] *Vernon* v. *State*, 240 Ala. 577, 200 So. 560; *Johnson* v. *Williams*, *supra*.

[9] *Johnson* v. *Williams*, *supra*.

[10] *Marino* v. *Ragen*, 92 L. Ed. —.

[11] *Marino* v. *Ragen*, *supra*.

obtain leave to file a petition for the writ of error *coram nobis* to establish want of due process under the Constitution, as the majority opinion holds, the guarantees of the Constitution become as 'sounding brass and tinkling cymbal'—mere platitudes—without force or substance and a defendant put on the 'rack' and forced to confess his guilt is without remedy or hope."

There was no direct conflict between the allegations contained in the petition before the Alabama Supreme Court and the facts of the record. At petitioner's trial, no proof was offered as a predicate for the introduction of the alleged confession. Rather, there was merely a lack of proof of duress because the effect of the same coercion and intimidation used to force the confession from petitioner still made itself felt upon him.

The petition submitted to the Alabama Supreme Court "establishes on its face the deprivation of a federal right."[12] It is submitted that instead of offering a remedy therefor, the Supreme Court of Alabama, through its refusal to grant permission for the filing of an application for writ of error *coram nobis*, deprived petitioner of his only avenue of relief from this unconstitutional conviction "without giving petitioner an opportunity to prove his allegations."[13] This denial has deprived petitioner of relief even in the federal courts as such courts ordinarily do not entertain habeas corpus proceedings setting forth substantially the same facts as have been previously brought before a state court by writ of error *coram nobis* or in an habeas corpus proceeding.

The Alabama Court erred in denying petitioner relief on the grounds that some testimony appeared in the record that the confession was voluntary and that petitioner had

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[12] *Williams* v. *Kaiser*, 323 U. S. 471.

[13] *Williams* v. *Kaiser, supra; Tompkins* v. *Missouri*, 323 U. S. 485.

failed to testify at the original trial. As stated by Mr. Justice Murphy in the case of *Lee* v. *Mississippi*, supra.

> ". . . And since our constitutional system permits a conviction to be sanctioned only if in conformity with those principles, inconsistent testimony as to the confession should not and cannot preclude the accused from raising the due process issue in an appropriate manner. . . . Indeed, such a foreclosure of the right to complain 'of a wrong so fundamental that it made the whole proceeding a mere pretense of a trial and rendered the conviction and sentence wholly void,' . . . would itself be a denial of due process of law."

Petitioner's papers were sufficient to constitute a *prima facie* case and require the granting of permission to apply for the writ, followed by a hearing in substantiation of the allegations.[14]

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[14] "Habeas corpus is a remedy available in the courts of Kansas to persons imprisoned in violation of rights guaranteed by the Constitution of the United States. Petitioner's papers are inexpertly drawn, but they do set forth allegations that his imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain his conviction, and from the deliberate suppression by those same authorities of evidence favorable to him. These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and, if proven, would entitle petitioner to release from his present custody. They are supported by the exhibits referred to above, and nowhere are they refuted or denied. The record of petitioner's conviction, while regular on its face, manifestly does not controvert the charges that perjured evidence was used, and that favorable evidence was suppressed with the knowledge of the Kansas authorities. *No determination of the verity of these allegations appears to have been made.* The case is therefore remanded for further proceedings." *Pyle* v. *Kansas*, 317 U. S. 213 (1942) (italics ours).

"Whatever inference of waiver could be drawn from the petitioner's plea of guilty is adequately answered by the uncontroverted statement in his position that he did not waive the right either by word or action. This . . . squarely raised a question of fact . . . A defendant who pleads guilty is entitled to the benefit of counsel, and a request . . . . is not necessary. It is enough that a defendant . . . is incapable adequately of making his defense . . . *Whether all these conditions* exist is a matter which must *be determined by evidence where the facts are in dispute.*" *Rice* v. *Olsen*, 324 U. S. 786 (1945) (italics ours).

While the majority of this Court in the *Hysler* [15] case sustained the state court's refusal to issue the order, the case is easily distinguishable from the instant case, and in fact the instant case falls within the offensive violations of constitutional guarantees as outlined by Mr. Justice Frankfurter for the majority in stating guides for decisions of this nature. In the *Hysler* case, petitioner in alleging denial of due process four years after conviction based his claim for relief on the recantation of one of the witnesses against him. In commenting upon this basis for petitioner's relief, this Court stated:

> "Hysler's claim before the Supreme Court of Florida was that Baker repudiated his testimony insofar as it implicated Hysler and that he now named another man as the instigator of the crime. Considering the fact that this repudiation came four years after leaden-footed justice had reached the end of the familiar trail of dilatory procedure, and that Baker now pointed to an instigator who was dead, the Supreme Court of Florida had every right and the plain duty to scrutinize this repudiation with a critical eye, in the light of its familiarity with the facts of this crime as they had been adduced in three trials, . . ."

The instant case is clearly distinguishable from the above in that, far from presenting a collateral attack upon the judgment of the court, petitioner alleges that he *personally* was brutally beaten, intimidated and coerced by state officers to the point of not only confessing to a crime which he did not commit but to such a degree that the fear for his life sealed his lips in communications with his court-appointed attorney. In addition, petitioner in his application for writ of error *coram nobis* filed at the earliest possible time

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[15] *Hysler* v. *Florida*, 315 U. S. 411 (1942).

presented the affidavits of three other persons arrested with him, all of whom alleged substantially the same set of facts surrounding the mistreatment accorded petitioner while in the custody of state officers. There is no question of recantation of perjured testimony here but rather a request for an opportunity to be heard for the first time at a time and a place not permeated with fear, intimidation and threats for one's safety which, in itself, is the very essence of due process.

The denial to petitioner of this opportunity for a hearing upon his allegations constitutes reversible error requiring remedial action by this Court.

## Conclusion

The State of Alabama, while purporting to follow the requirements of due process as set forth by this Court in *Mooney* v. *Holohan, supra,* has by practice, effectively denied to petitioner the very type of corrective judicial process required by this Court.

The life of an American citizen hangs in the balance. This Court should, in view of this, "insist upon the fullest measure of due process." [16] If the petitioner is denied the opportunity to present proof of the denial of his constitutional right to due process, then as stated by Justice Brown in his dissenting opinion below:

> "Guarantees of the Constitution become as 'sounding brass and tinkling cymbal'."

It is respectfully requested that this Court reverse the decision of the Supreme Court of the State of Alabama

[16] *Carter* v. *Illinois,* 329 U. S. 173.

denying petitioner leave to apply for a writ of error *coram nobis* to the Circuit Court of Mobile County, Alabama.

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